

AMENDED IN ASSEMBLY APRIL 8, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 952

Introduced by Assembly Member Cristina Garcia

February 26, 2015

An act to amend Section ~~5091~~ of the Education Code, and to amend Sections ~~1780~~ and 36512 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL’S DIGEST

AB 952, as amended, Cristina Garcia. Local government: ~~cities:~~ ~~special districts:~~ ~~governing boards:~~ vacancies.

Existing law requires a city council, within 60 days of a vacancy in an elective office, to fill that vacancy by appointment or call a special election to fill the vacancy, and provides that a person elected or appointed to fill a vacancy holds office for the unexpired term of the former incumbent.

This bill would instead provide that if the council fills a vacancy in an elective office by appointment, and that vacancy occurred in the first half of the term of office and at least 130 days prior to the next general municipal election, the person appointed to fill the vacancy holds office until the next general municipal election at which a person is elected to fill that vacancy, and thereafter, until the person elected is qualified. The bill would additionally provide that if the vacancy occurs in the first half of a term of office, but less than 130 days prior to the next general municipal election, or if the vacancy occurs in the second half of the term of office, the person appointed to fill the vacancy holds office for the unexpired term of the former incumbent.

Existing law requires a school district or community college district governing board, whenever a vacancy occurs or a resignation containing a deferred effective date has been filed with the county superintendent of schools, to either order an election or make a provisional appointment. Existing law requires a person appointed to fill a vacancy to hold office only until the next regularly scheduled election for district governing board members that is scheduled 130 or more days after the effective date of the vacancy, at which time an election is required to be held to fill the vacancy for the remainder of the unexpired term.

This bill would require the provisional appointee to serve on the board until the next regularly scheduled election. This bill would eliminate the requirement that an election be held 130 or more days after the effective date of the vacancy.

Existing law requires a person elected to fill a vacancy in an elective office on the governing board of a special district, or a person appointed to fill a vacancy in an appointed office or an elective office in a general law city, to fill the vacancy for the balance of the unexpired term of office or the unexpired term of the former incumbent, as applicable.

This bill would instead require those persons to fill the vacancy until the next regularly scheduled election.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. ~~Section 5091 of the Education Code is amended~~
2 ~~to read:~~
3 5091. (a) (1) If a vacancy occurs, or if a resignation has been
4 ~~filed with the county superintendent of schools containing a~~
5 ~~deferred effective date, the school district or community college~~
6 ~~district governing board shall, within 60 days of the vacancy or~~
7 ~~the filing of the deferred resignation, either order an election or~~
8 ~~make a provisional appointment to fill the vacancy. A governing~~
9 ~~board member may not defer the effective date of his or her~~
10 ~~resignation for more than 60 days after he or she files the~~
11 ~~resignation with the county superintendent of schools. A~~
12 ~~provisional appointee shall serve on the board until the next~~
13 ~~regularly scheduled election.~~
14 (2) In the event that a governing board fails to make a
15 provisional appointment or order an election within the prescribed

1 60-day period as required by this section, the county superintendent
2 of schools shall order an election to fill the vacancy.

3 (b) ~~When an election is ordered, it shall be held on the next~~
4 ~~established election date provided pursuant to Chapter 1~~
5 ~~(commencing with Section 1000) of Division 1 of the Elections~~
6 ~~Code not less than 130 days after the order of the election.~~

7 (c) ~~(1) If a provisional appointment is made within the 60-day~~
8 ~~period, the registered voters of the district may, within 30 days~~
9 ~~from the date of the appointment, petition for the conduct of a~~
10 ~~special election to fill the vacancy. A petition shall be deemed to~~
11 ~~bear a sufficient number of signatures if signed by at least the~~
12 ~~number of registered voters of the district equal to 1 ½ percent of~~
13 ~~the number of registered voters of the district at the time of the~~
14 ~~last regular election for governing board members, or 25 registered~~
15 ~~voters, whichever is greater. However, in districts with less than~~
16 ~~2,000 registered voters, a petition shall be deemed to bear a~~
17 ~~sufficient number of signatures if signed by at least 5 percent of~~
18 ~~the number of registered voters of the district at the time of the~~
19 ~~last regular election for governing board members.~~

20 ~~(2) The petition shall be submitted to the county superintendent~~
21 ~~of schools having jurisdiction who shall have 30 days to verify the~~
22 ~~signatures. If the petition is determined to be legally sufficient by~~
23 ~~the county superintendent of schools, the provisional appointment~~
24 ~~is terminated, and the county superintendent of schools shall order~~
25 ~~a special election to be conducted no later than the 130th day after~~
26 ~~the determination. However, if an established election date, as~~
27 ~~defined in Section 1000 of the Elections Code, occurs between the~~
28 ~~130th day and the 150th day following the order of the election,~~
29 ~~the county superintendent of schools may order the special election~~
30 ~~to be conducted on the established election date.~~

31 ~~(3) For purposes of this section, “registered voters” means the~~
32 ~~following:~~

33 ~~(A) If the district uses the at-large method of election, as defined~~
34 ~~in subdivision (a) of Section 14026 of the Elections Code,~~
35 ~~registered voters of the entire school district or community college~~
36 ~~district.~~

37 ~~(B) If the district uses district-based elections, as defined in~~
38 ~~subdivision (b) of Section 14026 of the Elections Code, registered~~
39 ~~voters of the election district.~~

~~(d) A provisional appointment made pursuant to subdivision (a) confers all powers and duties of a governing board member upon the appointee immediately following his or her appointment.~~

~~(e) A person appointed to fill a vacancy shall hold office only until the next regularly scheduled election. A person elected at an election to fill the vacancy shall hold office for the remainder of the term in which the vacancy occurs or will occur.~~

~~(f) (1) If a petition calling for a special election is circulated, the petition shall meet all of the following requirements:~~

~~(A) The petition shall contain the estimate of the elections official of the cost of conducting the special election.~~

~~(B) The name and residence address of at least one, but not more than five, of the proponents of the petition shall appear on the petition, each of which proponents shall be a registered voter of the school district or community college district, as applicable.~~

~~(C) None of the text or other language of the petition shall appear in less than six-point type.~~

~~(D) The petition shall be prepared and circulated in conformity with Sections 100 and 104 of the Elections Code.~~

~~(2) If any of the requirements of this subdivision are not met as to any petition calling for a special election, the county superintendent of schools shall not verify the signatures, nor shall any further action be taken with respect to the petition.~~

~~(3) No person shall permit the list of names on petitions prescribed by this section to be used for any purpose other than qualification of the petition for the purpose of holding an election pursuant to this section.~~

~~(4) The petition filed with the county superintendent of schools shall be subject to the restrictions in Section 6253.5 of the Government Code.~~

~~(g) Elections held pursuant to subdivisions (b) and (c) shall be conducted in as nearly the same manner as practicable as other governing board member elections.~~

~~SEC. 2. Section 1780 of the Government Code is amended to read:~~

~~1780. (a) Notwithstanding any other provision of law, a vacancy in any elective office on the governing board of a special district, other than those specified in Section 1781, shall be filled pursuant to this section.~~

1 ~~(b) The district shall notify the county elections official of the~~
2 ~~vacancy no later than 15 days after either the date on which the~~
3 ~~district board is notified of the vacancy or the effective date of the~~
4 ~~vacancy, whichever is later.~~

5 ~~(c) The remaining members of the district board may fill the~~
6 ~~vacancy either by appointment pursuant to subdivision (d) or by~~
7 ~~calling an election pursuant to subdivision (e).~~

8 ~~(d) (1) The remaining members of the district board shall make~~
9 ~~the appointment pursuant to this subdivision within 60 days after~~
10 ~~either the date on which the district board is notified of the vacancy~~
11 ~~or the effective date of the vacancy, whichever is later. The district~~
12 ~~shall post a notice of the vacancy in three or more conspicuous~~
13 ~~places in the district at least 15 days before the district board makes~~
14 ~~the appointment. The district shall notify the county elections~~
15 ~~official of the appointment no later than 15 days after the~~
16 ~~appointment.~~

17 ~~(2) If the vacancy occurs in the first half of a term of office and~~
18 ~~at least 130 days prior to the next general district election, the~~
19 ~~person appointed to fill the vacancy shall hold office until the next~~
20 ~~general district election that is scheduled 130 or more days after~~
21 ~~the date the district board is notified of the vacancy, and thereafter~~
22 ~~until the person who is elected at that election to fill the vacancy~~
23 ~~has been qualified. The person elected to fill the vacancy shall~~
24 ~~hold office until the next regularly scheduled election.~~

25 ~~(3) If the vacancy occurs in the first half of a term of office, but~~
26 ~~less than 130 days prior to the next general district election, or if~~
27 ~~the vacancy occurs in the second half of a term of office, the person~~
28 ~~appointed to fill the vacancy shall serve until the next regularly~~
29 ~~scheduled election.~~

30 ~~(e) (1) In lieu of making an appointment the remaining members~~
31 ~~of the board may within 60 days of the date the district board is~~
32 ~~notified of the vacancy or the effective date of the vacancy,~~
33 ~~whichever is later, call an election to fill the vacancy.~~

34 ~~(2) The election called pursuant to this subdivision shall be held~~
35 ~~on the next established election date provided in Chapter 1~~
36 ~~(commencing with Section 1000) of Division 1 of the Elections~~
37 ~~Code that is 130 or more days after the date the district board calls~~
38 ~~the election.~~

39 ~~(f) (1) If the vacancy is not filled by the district board by~~
40 ~~appointment, or if the district board has not called for an election~~

1 within 60 days of the date the district board is notified of the
2 vacancy or the effective date of the vacancy, whichever is later,
3 then the city council of the city in which the district is wholly
4 located, or if the district is not wholly located within a city, the
5 board of supervisors of the county representing the larger portion
6 of the district area in which the election to fill the vacancy will be
7 held, may appoint a person to fill the vacancy within 90 days of
8 the date the district board is notified of the vacancy or the effective
9 date of the vacancy, whichever is later, or the city council or board
10 of supervisors may order the district to call an election to fill the
11 vacancy.

12 (2) The election called pursuant to this subdivision shall be held
13 on the next established election date provided in Chapter 1
14 (commencing with Section 1000) of Division 1 of the Elections
15 Code that is 130 or more days after the date the city council or
16 board of supervisors calls the election.

17 (g) (1) If within 90 days of the date the district board is notified
18 of the vacancy or the effective date of the vacancy, whichever is
19 later, the remaining members of the district board or the appropriate
20 board of supervisors or city council have not filled the vacancy
21 and no election has been called for, then the district board shall
22 call an election to fill the vacancy.

23 (2) The election called pursuant to this subdivision shall be held
24 on the next established election date provided in Chapter 1
25 (commencing with Section 1000) of Division 1 of the Elections
26 Code that is 130 or more days after the date the district board calls
27 the election.

28 (h) (1) Notwithstanding any other provision of this section, if
29 the number of remaining members of the district board falls below
30 a quorum, then at the request of the district secretary or a remaining
31 member of the district board, the appropriate board of supervisors
32 or the city council shall promptly appoint a person to fill the
33 vacancy, or may call an election to fill the vacancy.

34 (2) The board of supervisors or the city council shall only fill
35 enough vacancies by appointment or by election to provide the
36 district board with a quorum.

37 (3) If the vacancy occurs in the first half of a term of office and
38 at least 130 days prior to the next general district election, the
39 person appointed to fill the vacancy shall hold the office until the
40 next general district election that is scheduled 130 or more days

1 after the date the district board is notified of the vacancy, and
2 thereafter until the person who is elected at that election to fill the
3 vacancy has been qualified. The person elected to fill the vacancy
4 shall hold office for the unexpired balance of the term of office.

5 (4) If the vacancy occurs in the first half of a term of office, but
6 less than 130 days prior to the next general district election, or if
7 the vacancy occurs in the second half of a term of office, the person
8 appointed to fill the vacancy shall fill the balance of the unexpired
9 term of office.

10 (5) The election called pursuant to this subdivision shall be held
11 on the next established election date provided in Chapter 1
12 (commencing with Section 1000) of Division 1 of the Elections
13 Code that is held 130 or more days after the date the city council
14 or board of supervisors calls the election.

15 **SEC. 3.**

16 *SECTION 1.* Section 36512 of the Government Code is
17 amended to read:

18 36512. (a) If a vacancy occurs in an appointive office provided
19 for in this chapter, the council shall fill the vacancy by
20 appointment. A person appointed to fill a vacancy holds office
21 until the next regularly scheduled election. *for the unexpired term*
22 *of the former incumbent.*

23 (b) If a vacancy occurs in an elective office provided for in this
24 chapter, the council shall, within 60 days from the commencement
25 of the vacancy, either fill the vacancy by appointment or call a
26 special election to fill the vacancy. ~~The~~

27 (1) *If the council calls a special election, the special election*
28 *shall be held on the next regularly established election date not*
29 *less than 114 days from the call of the special election. A person*
30 *elected to fill a vacancy holds office for the unexpired term of the*
31 *former incumbent.*

32 (2) *If the council fills the vacancy by appointment, the person*
33 *appointed to fill the vacancy shall hold office pursuant to one of*
34 *the following:*

35 (A) *If the vacancy occurs in the first half of a term of office and*
36 *at least 130 days prior to the next general municipal election, the*
37 *person appointed to fill the vacancy shall hold office until the next*
38 *general municipal election that is scheduled 130 or more days*
39 *after the date the council is notified of the vacancy, and thereafter*
40 *until the person who is elected at that election to fill the vacancy*

1 *has been qualified. The person elected to fill the vacancy shall*
2 *hold office for the unexpired balance of the term of office.*

3 *(B) If the vacancy occurs in the first half of a term of office, but*
4 *less than 130 days prior to the next general municipal election, or*
5 *if the vacancy occurs in the second half of a term of office, the*
6 *person appointed to fill the vacancy shall hold office for the*
7 *unexpired term of the former incumbent.*

8 (c) Notwithstanding subdivision (b) and Section 34902, a city
9 may enact an ordinance that does any of the following:

10 (1) Requires that a special election be called immediately to fill
11 every city council vacancy and the office of mayor designated
12 pursuant to Section 34902. The ordinance shall provide that the
13 special election shall be held on the next regularly established
14 election date not less than 114 days from the call of the special
15 election.

16 (2) Requires that a special election be held to fill a city council
17 vacancy and the office of mayor designated pursuant to Section
18 34902 when petitions bearing a specified number of verified
19 signatures are filed. The ordinance shall provide that the special
20 election shall be held on the next regularly established election
21 date not less than 114 days from the filing of the petition. A
22 governing body that has enacted such an ordinance may also call
23 a special election pursuant to subdivision (b) without waiting for
24 the filing of a petition.

25 (3) Provides that a person appointed to fill a vacancy on the city
26 council holds office only until the date of a special election which
27 shall immediately be called to fill the remainder of the term or
28 until the next regularly scheduled citywide election. The special
29 election may be held on the date of the next regularly established
30 election or regularly scheduled municipal election to be held
31 throughout the city not less than 114 days from the call of the
32 special election.

33 (d) (1) Notwithstanding subdivision (b) and Section 34902, an
34 appointment shall not be made to fill a vacancy on a city council
35 if the appointment would result in a majority of the members
36 serving on the council having been appointed. The vacancy shall
37 be filled in the manner provided by this subdivision.

38 (2) The city council may call an election to fill the vacancy, to
39 be held on the next regularly established election date not less than
40 114 days after the call.

1 (3) If the city council does not call an election pursuant to
2 paragraph (2), the vacancy shall be filled at the next regularly
3 established election date.

4 (e) (1) If the city council of a city that elects city council
5 members by or from districts elects to fill a vacancy on the city
6 council by appointment as a result of a city council member
7 resigning from office, the resigning city council member may cast
8 a vote on the appointment if the resignation will go into effect
9 upon the appointment of a successor. A city council member shall
10 not cast a vote for a family member or any other person with whom
11 the city council member has a relationship that may create a
12 potential conflict of interest.

13 (2) If a city council member elects to cast a vote under this
14 subdivision, the city council member shall be prohibited from the
15 following actions for a period of two years after the appointment
16 of a successor:

17 (A) Advocating on any measure or issue coming before the city
18 council in which the city council member may have a personal
19 benefit.

20 (B) Entering into a contract of any kind with the city or a city
21 vendor.

22 (C) Accepting a position of employment with the city or a city
23 vendor.

24 (D) Applying for a permit that is subject to the approval of the
25 city council.

26 (3) This subdivision shall not apply to any city council member
27 who is resigning from the city council due to charges of, or
28 conviction for, corruption or criminal behavior, or who is subject
29 to a recall election.